



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Molly Joseph Ward
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Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO THE
CITY OF FREDERICKSBURG
FOR THE
FREDERICKSBURG WASTEWATER TREATMENT PLANT
VPDES PERMIT NO. VA0025127**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the City of Fredericksburg, regarding the Fredericksburg Wastewater Treatment Plant for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "City" means the City of Fredericksburg, a political subdivision of the Commonwealth of Virginia. The City of Fredericksburg is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "CBOD5" means Carbonaceous Biochemical Oxygen Demand.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant, 9 VAC 25-31-10.
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "DMR" means Discharge Monitoring Report.
10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. "Facility" means the Fredericksburg Wastewater Treatment Plant located at 700 Beulah-Salisbury Road, Fredericksburg, Virginia, which treats and discharges treated sewage and other municipal wastes from domestic, commercial, and light industrial sources.
12. "IR" means Incident Report.
13. "MGD" means million gallons per day.
14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
15. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
16. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
17. "PCBs" means polychlorinated biphenyls.
18. "Permit" means VPDES Permit No. VA0025127, which was issued under the State Water Control Law and the Regulation to the City of Fredericksburg on February 27, 2013, and which expires on February 26, 2018.

19. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water...
9 VAC 25-31-10.
20. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution," Va. Code § 62.1-44.3.
21. "Regulation" means the VPDES Permit Regulation. 9 VAC 25-31-10 *et seq.*
22. "SIU" means Significant Industrial Users.
23. "SSO" means Sanitary Sewer Overflow.
24. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
25. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.
Va. Code § 62.1-44.3.
26. "TKN" means Total Kjeldahl Nitrogen.
27. "TSS" means Total Suspended Solids.
28. "Va. Code" means the Code of Virginia (1950), as amended.
29. "VAC" means the Virginia Administrative Code.
30. "VPDES" means Virginia Pollutant Discharge Elimination System.

31. "Warning Letter" or "WL" means a type of Notice of Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The City owns and operates the Facility located in the City of Fredericksburg, Virginia. The Permit authorizes the City to discharge treated sewage and other municipal wastes from domestic, commercial, and light industrial sources solely from outfalls located at the Facility, to the Rappahannock River, in strict compliance with the terms and conditions of the Permit. The design flow of the Facility is 4.5 MGD.
2. The Rappahannock River is located within the Rappahannock River Basin. This segment is listed in DEQ's Draft 2014 305(b)/303(d) Integrated Report as impaired for bacteria, dissolved oxygen, and PCBs in fish tissue.
3. In submitting its DMR for the October 2015 monitoring period, as required by the Permit, the City has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for the weekly concentration average maximum limit and weekly quantity average maximum limit for TSS.
4. In submitting its DMR for the October 2015 monitoring period, as required by the Permit, the City has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for the weekly concentration average maximum limit and weekly quantity average maximum limit for TKN.
5. NRO issued a WL for the violations cited above in paragraphs C(3) – C(4): WL No. W2015-12-N-1003 on December 15, 2015.
6. On January 6, 2016, the City responded to the WL.
7. The January 6, 2016, response stated that the Permit limit violations were directly related to 4 days of heavy rain. As a result of the weather a significant increase in influent volume occurred, causing the City to operate the Facility in high flow mode, reducing the contact time in the oxidation ditch, and the effectiveness Facility.
8. On December 22, 2015, City staff reported to DEQ, a SSO from a broken force main 150 feet upstream of the Snowden Pump Station with a volume of less than 5,000 gallons of raw sewage discharging into the Snowden Marsh that drains to the Rappahannock River. This event was assigned IR# 2016-N-1921.
9. Part II, Section F, of the Permit, states: "Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to public health, or to animal or aquatic life, or to the

use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”

10. On January 12, 2016, NRO received the results of the second wet weather and second dry weather sampling events for PCBs for the Facility late. The data was due on January 10, 2016, and was provided by the City following a January 12, 2016 DEQ-request to provide the information.
11. Part I, Section F, No. 9.d, of the Permit, states: “The data shall be submitted to DEQ-NRO by the 10th day of the month following receipt of the results. The permittee shall have the option of submitting the results electronically. The submittal shall include the unadjusted and appropriately qualified individual PCB congener analytical results. Additionally, laboratory and field QA/QC documentation and results shall be reported. Total PCBs are to be computed as the summation of the reported, quantified congeners.”
12. NRO issued a NOV for the violations cited above in paragraphs C(8) – C(11): NOV No. W2016-02-N-0008 on February 17, 2016.
13. On February 26, 2016, the City responded to the NOV.
14. The February 26, 2016, response stated that: (1) late submission of the PCB data resulted from an administrative oversight and changes in administrative tracking processes have been implemented at the Facility, and (2) the SSO resulted from a broken force main conveying sewage from the Snowden Pump Station. The City asserted that the force main break was the result of repeated hydraulic surges occurring when the pumps cycle off. The City has engaged engineering firms to correct the operational problem.
15. On February 29, 2016, City staff reported to DEQ, a SSO from Manhole #8017 of the Fall Hill sewer line with a volume of 1,000 gallons of raw sewage discharging into an unnamed tributary to the Rappahannock Canal. This event was assigned IR#2016-N-2600.
16. Part II, Section F, of the Permit, states: “Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”
17. NRO issued a NOV for the violations cited above in paragraphs C(15) – C(16): NOV No. W2016-04-N-0001 on April 12, 2016.

18. Based on Facility file review conducted during a site visit on June 27, 2016, DEQ observed that the City failed to inspect and sample SIUs discharging to the Facility's sanitary sewer collection system in calendar year 2015.
19. Part I Section C.1.I, of the Permit, states: "The permittee shall inspect and sample all SIUs at a minimum of once a year. (1) Sampling shall include all regulated parameters, and shall be representative of the wastewater discharged. (2) Inspection of the SIUs shall cover all areas that could result in wastewater discharge to the treatment works including manufacturing, chemical storage, pretreatment facilities, spill prevention and control procedures, hazardous waste generation and SIU self-monitoring and records."
20. NRO issued a NOV for the violations cited above in paragraphs C(18) – C(19): NOV No. W2016-07-N-0004 on July 8, 2016.
21. On June 27, 2016, DEQ conducted a pretreatment audit of the Facility. DEQ sent an audit report to the City on August 1, 2016, with a response deadline of August 31, 2016. A partial response was received on November 2, 2016, and a complete response was received on December 2, 2016.
22. Part II.D, of the Permit states: "The permittee shall furnish to the Department, within a reasonable time, any information which the Board may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating this permit or to determine compliance with this permit....copies of records required to be kept by this permit.
23. NRO issued a NOV for the violation cited above in paragraphs C(21) – C(22): NOV No. W2016-10-N-0001 on October 24, 2016.
24. NRO issued a NOV for the continuing violation cited above in paragraphs C(21) – C(22): NOV No. W2016-11-N-0010 on November 16, 2016.
25. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
26. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
27. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
28. The Department has issued no permits or certificates to the City other than VPDES Permit No. VA0025127.

29. The Rappahannock River is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
30. Based on the DMRs, SSO reports, and submitted documents, the Board concludes that the City has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging effluent from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3), C(4), C(8) – C(11), C(15), C(16), C(18), C(19), C(21), and C(22) above.
31. In order for the City to complete its return to compliance, DEQ staff and representatives of the City have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the City, and the City agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge \$14,775.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The City shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the City shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with consent of the City for good cause shown by the City, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any

action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the City admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The City consents to venue in the Circuit Court of the City of Fredericksburg for any civil action taken to enforce the terms of this Order.
5. The City declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the City intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the City. Nevertheless, the City agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the City has completed all of the requirements of the Order;
 - b. The City petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the City.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the City and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the City certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, the City agrees to the issuance of this Order.

And it is so ORDERED this 27th day of March, 2017.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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The City of Fredericksburg voluntarily agrees to the issuance of this Order.

Date: 1/27/2017 By: [Signature] Baroody City Manager
(Person) (Title)

The City of Fredericksburg

Commonwealth of Virginia

City/County of FREDERICKSBURG

The foregoing document was signed and acknowledged before me this 27 day of

JANUARY, 2017, by TIMOTHY J. BAROODY who is

CITY MANAGER of the City of Fredericksburg, on behalf of the City.

[Signature] Brenda T. Martin
Notary Public

308347

Registration No.

My commission expires: JULY 31, 2017

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

A. Corrective Action:

1. Within 60 days of the date of this Order, the City shall complete a review of the Facility's high flow mode operations when diverting flow to the Spotsylvania County's FMC facility is not possible and shall update its operating procedure for high flow mode based on its review results. The City shall submit the update procedure to DEQ at the conclusion of the 60 day period.
2. Within 60 days of the date of this Order, the City shall prepare an engineering analysis of the Snowden Sewage Pump Station and Force Main hydraulic surge problem causing the pipe break. Within 180 days of the date of this Order, the City will submit for DEQ review and approval a plan and schedule for addressing the hydraulic surge problem.

B. Submissions:

Unless otherwise specified in this Order, the City shall submit all requirements of Appendix A of this Order to:

Enforcement
Virginia Department of Environmental Quality
Northern Regional Office
13901 Crown Court
Woodbridge, VA 22193

